

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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Attorneys for Plaintiff Heritage Community Bank

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HERITAGE COMMUNITY BANK,
A New Jersey Chartered Bank,

Plaintiff,

v.

HERITAGE BANK, N.A., a proposed National
Association to be engaged in the business of
banking,

Defendant.
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Civil Action No. 08-4322 (JAG)

**COUNSEL’S DECLARATION IN
SUPPORT OF PRELIMINARY
INJUNCTION**

WILLIAM C. CAGNEY, pursuant to Title 28, United States Code, Section 1746,
declares:

1. I am an attorney in private practice and am a partner with the law firm of Windels Marx Lane & Mittendorf, LLP. We represent Plaintiff Heritage Community Bank (“Plaintiff”) in the captioned action.

2. I submit this Declaration in support of Plaintiff’s application for a preliminary injunction against Defendant Heritage Bank, N.A. (“Defendant”).

3. Attached hereto as Exhibit A is the Complaint and Jury Demand in this action, which was electronically filed on August 28, 2008.

4. Attached hereto as Exhibit B is a true copy of Defense Counsel's signed Acknowledgement and Acceptance of Service.

5. Attached hereto as Exhibit C is a true copy of our firm's May 22, 2008 cease and desist letter directed to Defendant's Counsel.

6. Attached hereto as Exhibit D is a true copy of a News Release Consumer Expenditures in the Greater New York Area, 2004-2005 (May 30, 2007), available at <http://www.bls.gov/ro2/ce9865.pdf>.

7. Attached hereto as Exhibit E is a true copy of Defendant's Interagency Bank Charter and Federal Deposit Insurance Application (without exhibits)

8. Attached hereto as Exhibit F is a true copy of a portion of the Weekly Bulletin of the Office of the Comptroller of the Currency.

9. Attached hereto as Exhibit G is a true copy of a press release by Defendant dated June 18, 2008.

10. Attached hereto as Exhibit H is a true copy of the Defendant's Offering Circular dated July 3, 2008.

11. Attached hereto as Exhibit I is a true copy of Defendant's letter dated July 9, 2008, addressed to Mr. Raymond Nisivoccia, CPA.

12. According to Defendant's website in early August, Defendant, as part of its efforts to raise investment capital, scheduled (and presumably conducted) a presentation for Wednesday, August 6, 2008, at the Hilton Short Hills, 411 JFK Parkway, Short Hills, New Jersey; Defendant promoted this event under the heading "Heritage Bank" (with the word "(proposed)" following in much smaller type font), but without any reference to "N.A.", or any other reference distinguishing Defendant from Plaintiff. That portion of Defendant's website was removed after August 6, 2008. As of September 17, 2008, Defendants' website, www.heritagebankny.com, heads its pages with "HERITAGE" in large block letters, "BANK" thereunder in smaller (about half-the-size) print below the three "AGE" letters, and "(IN

ORGANIZATION") in still smaller (about one-quarter-the-size) print below the four "BANK" letters.

13. In a series of telephone calls to Defendant's office made by myself and my paralegal during the past month, the answerer consistently identified Defendant as simply "Heritage" preceded by "hello" or "thank you for calling."

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 18, 2008



WILLIAM C. CAGNEY